



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 32867353

Date: AUG. 6, 2024

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a biostatistician researcher, seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner did not establish that he had received a one-time achievement (a major, internationally recognized award) or that he satisfied at least three of the initial evidentiary criteria, as required for the requested classification. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to immigrants with extraordinary ability if:

- (i) the [noncitizen] has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the [noncitizen] seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the [noncitizen's] entry into the United States will substantially benefit prospectively the United States.

The term “extraordinary ability” refers only to those individuals in “that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate recognition of their achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If the petitioner does not submit this evidence, then they must provide sufficient qualifying documentation that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010). (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

The Petitioner has a Ph.D. in biostatistics and is currently employed with [REDACTED] where he designs clinical studies of chronic pain. He states that he is “one of the few leading statistical genetics experts in biostatistics, ... especially well-known for his work in identifying rare disease variants, COVID-19 testing procedures, and the health impacts of environmental pollutants.” He also developed the [REDACTED] method of statistical genetic analysis. He seeks to continue his work as a senior advisor in statistics in the United States. Since he does not claim to have a one-time achievement, he must submit evidence meeting at least three of the ten initial evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

The Petitioner initially claimed that he met three of these criteria:

- (iv), Participating as a judge of the work of others in the field;
- (v), Original contributions of major significance; and
- (vi), Authorship of scholarly articles in the field, in professional or major trade publications or other major media.

The Director issued a request for evidence (RFE), notifying the Petitioner that the evidence in the record did not demonstrate that he met any of the criteria at 8 C.F.R. § 204.5(h)(3). The Director allowed the Petitioner an opportunity to submit additional evidence to demonstrate that he satisfied at least one more of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

In response to the RFE, the Petitioner submitted additional evidence asserting that he meets the following criteria:

- (iv), Participating as a judge of the work of others in the field;

- (v), Original contributions of major significance;
- (vi), Authorship of scholarly articles in the field, in professional or major trade publications or other major media;
- (viii), Performing in a leading or critical role for organizations or establishments that have a distinguished reputation; and
- (ix), Commanded a high salary, or other significantly high remuneration for services, in relation to others in the field.

In denying the petition, the Director determined that the Petitioner demonstrated that he met only two of the claimed criteria. Specifically, the Director concluded that the Petitioner met the criteria at 8 C.F.R. § 204.5(h)(3)(iv), participating as a judge of the work of others, and 8 C.F.R. § 204.5(h)(3)(vi), authorship of scholarly articles. The record supports the Director's determination that the Petitioner satisfied these two criteria.

The Director determined that the Petitioner claimed but did not submit sufficient evidence establishing that he has made original contributions of major significance in the field; that he has performed in a leading or critical role for organizations with a distinguished reputation; and that he has commanded a high salary or other significantly high remuneration in relation to others in the field. *See* 8 C.F.R. § 204.5(h)(3)(v), (viii), (ix). The Director concluded that, because the Petitioner did not establish that he met at least three of the criteria at 8 C.F.R. § 204.5(h)(3), it was not necessary to conduct a final merits determination to determine whether the Petitioner has sustained national or international acclaim and that his achievements have been recognized indicating that he is one of that small percentage who has risen to the very top of the field of endeavor.

On appeal, the Petitioner maintains that the previously submitted evidence was sufficient to establish that he satisfied these additional criteria. He also submits additional evidence in support of his claims. After reviewing the evidence in the record, we conclude that the Petitioner has demonstrated that he satisfies at least three of the ten initial evidentiary criteria, and met the first step in the required analysis.

Contrary to the Director's decision, we find sufficient evidence of the Petitioner's "original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field." 8 C.F.R. § 204.5(h)(3)(v). Under this criterion, USCIS first determines whether a petitioner has made original contributions in their field. *See generally* 6 *USCIS Policy Manual* F.(2) App'x, www.uscis.gov/policy-manual. If so, the Agency then considers the contributions' significance. *Id.* Contributions do not necessarily have major significance just because they are original. *Id.* A petitioner must submit evidence of their importance, such as their generation of widespread commentary, notice from others working in the field, or citations. *Id.*

In both the RFE and the decision, the Director appeared to acknowledge the Petitioner's original scientific contributions, stating, "While your research may show you have novel or original contributions, the record does not establish that your research has ascended to major significance." However, the Director contradicts this statement in the decision, stating, "You did not submit sufficient independent, objective evidence that your contributions are 'original' and have significantly influenced the field."

The Petitioner states that his development of the [REDACTED] tools and other methodologies for data analysis are original contributions of major significance to the field of biostatistics. He asserts that use of his methodologies has led to “discoveries related to polygenic risk scores, COVID-19 testing procedures, and the identification of genes and rare variants.”

The record establishes the Petitioner’s original contributions to the field. Evidence in the record demonstrates that the Petitioner’s methodologies have been used in data analysis of studies involving human ovarian aging, trait and disease heritability, measuring the risk of harm from environmental pollutants, and COVID-19 data.

The Director acknowledged letters from other researchers praising the Petitioner’s skillset and research. However, the Director determined that the letters did not demonstrate that the Petitioner’s contributions are both original and of major significance in the field. The Director stated that the record did not include corroborating documentary evidence to establish the major significance of the Petitioner’s work. The Director further stated, “[L]etters, though not without weight, cannot form the cornerstone of a successful claim of extraordinary ability.”

The Director overlooked evidence of the significance of the Petitioner’s original contributions. The Petitioner submitted documentation demonstrating that, from 2017 to 2024, he ranked in the 99.96% citation percentile in the field of biostatistics. Additionally, five of the Petitioner’s scholarly articles presenting his methodologies rank in the top 10% of most-cited articles in the field. Two of the five articles rank in the top 1%. This and other evidence demonstrates that the Petitioner’s original research has significance.

Letters from other researchers indicate that the importance of the Petitioner’s original research is substantial. A professor and researcher with [REDACTED] praised the Petitioner’s research on data analysis using the [REDACTED] method. The professor stated that the Petitioner’s [REDACTED] method is “a critical contribution to biobank data analysis, improving the ability of researchers everywhere to analyze the genetic factors involved in a myriad of diseases and health conditions.” An associate professor and researcher at [REDACTED] states that he used the Petitioner’s [REDACTED] method of data analysis in his study on complex genetic traits in East Asian and European populations. Describing the major significance of the Petitioner’s work, he stated, “His work has played an important role in increasing not only the accuracy, but also the equity, of genetic research.”

Therefore, we conclude that the Petitioner has sufficiently demonstrated original scientific contributions of major significance to the field of biostatistics. With meeting this additional criterion, the Petitioner satisfied part one of this two-step adjudicative process described in *Kazarian* and has overcome the basis for the denial of his petition. Accordingly, we will withdraw the Director’s decision. Because the Petitioner has met the initial evidence requirements of at least three criteria, it is unnecessary to discuss any additional eligibility claims relating to the regulatory provisions at 8 C.F.R. § 204.5(h)(3)(i)-(x). However, granting the third initial criterion does not suffice to establish eligibility for the classification the Petitioner seeks or establish that the record supports the approval of the petition.

USCIS must now determine whether the record establishes sustained national or international acclaim and recognized achievements sufficient to place the Petitioner among the small percentage at the very top of his field. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20. The Director did not reach that finding, and we decline to make the final merits determination in the first instance. We will therefore remand the matter. On remand, the Director should evaluate the evidence and consider the petition in its entirety, including the evidence submitted on appeal, to make a final merits determination.

III. CONCLUSION

The Petitioner met the preliminary evidentiary requirements of the requested immigrant visa category. USCIS must now determine whether he has demonstrated extraordinary ability in his field.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.